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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,055	12/11/2003	David C. Challener	RPS920030164US1	7845
47052	7590	05/31/2006	EXAMINER	
SAWYER LAW GROUP LLP PO BOX 51418 PALO ALTO, CA 94303			EHNE, CHARLES	
			ART UNIT	PAPER NUMBER
			2113	

DATE MAILED: 05/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/733,055

Applicant(s)

CHALLENGER ET AL.

Examiner

Charles Ehne

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 11 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being unpatentable by Farrow (6,674,295).

As to claim 1, Farrow discloses a computer readable medium containing program instructions for establishing a network connection between a client system and a network, the program instructions for:

(a) collecting real time connectivity information by the client system (column 1, lines 29-34); and

(b) utilizing the real time connectivity information by the client system to establish a connection with the network (column 1, lines 29-30).

As to claim 3, Farrow discloses a computer readable medium of claim 1 further comprising:

(c) utilizing data from a server based database to establish a connection to the network (column 1, lines 31-34).

Claims 1,3 and 12 are rejected under 35 U.S.C. 102(b) as being unpatentable by Hibbard (2001/0056503).

As to claim 1, Hibbard discloses a computer readable medium containing program instructions for establishing a network connection between a client system and a network, the program instructions for:

(a) collecting real time connectivity information by the client system (Page 2, ¶ 0020, lines 1-4); and

(b) utilizing the real time connectivity information by the client system to establish a connection with the network (Page 2, ¶ 0023, lines 6-9).

As to claim 2, Hibbard discloses the computer readable medium of claim 1 further comprising:

(c) utilizing data from a local persistent knowledgebase to establish a connection to the network (Page 2, ¶ 0023, lines 4-6).

As to claim 12, Hibbard discloses a computer system coupled to a network comprising:

at least one network adapter for monitoring and collecting real time connectivity information from the network (Page 2, ¶ 0020, lines 1-4);

memory for storing the real time connectivity information (Page 2, ¶ 0024, lines 4-6); and

a processor coupled to the memory and to the at least one network adapter, wherein the processor is configured to execute program instructions for utilizing the real time connectivity information to repair a failed network connection between the computer system and the network (Page 2, ¶ 0019).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 4-6 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over unpatentable over Hibbard taken in view of Tang (2006/0092926).

As to claim 4, Hibbard discloses a computer readable medium for establishing a network connection between a client system and a network, the program instructions for: (a) collecting real time connectivity information by the client system (Page 2, ¶ 0020, lines 1-4); and (b) utilizing the real time connectivity information by the client system to establish a connection with the network (Page 2, ¶ 0023, lines 6-9). Hibbard fails to disclose wherein the collecting instruction (a) further includes:

(a1) monitoring and collecting network traffic in real time.

- (a2) assigning a weight to the real time network traffic based on popularity; and
- (a3) creating a weighted list from the weighted real time network traffic.

Tang discloses a method for allowing a client to monitor network traffic (Page 5, ¶ 0060, lines 3-5). Tang does disclose wherein the collecting instruction (a) further includes:

- (a1) monitoring and collecting network traffic in real time (Page 5, ¶ 0060, lines 3-5).

- (a2) assigning a weight to the real time network traffic based on popularity (Page 7, ¶ 0081, lines 7-9); and

- (a3) creating a weighted list from the weighted real time network traffic (Page 9, ¶ 0108, lines 9-11).

It would have been obvious to one of ordinary skill in this art at the time of invention by applicant to implement Tang's method of creating a weighted list with Hibbard's real time information. A person of ordinary skill in this art would have been motivated to make the modification because often there are more than one gateways capable of completing the same communication and ranking each address allows the system to pick the most reliable communication connection (Tang: Page 7, ¶ 0081, lines 7-13).

As to claim 13, Hibbard discloses a computer system coupled to a network comprising:

at least one network adapter for monitoring and collecting real time connectivity information from the network (Page 2, ¶ 0020, lines 1-4);

memory for storing the real time connectivity information (Page 2, ¶ 0024, lines 4-6); and

a processor coupled to the memory and to the at least one network adapter, wherein the processor is configured to execute program instructions for utilizing the real time connectivity information to repair a failed network connection between the computer system and the network (Page 2, ¶ 0019). Hibbard fails to disclose wherein the program instructions further comprises assigning a weight to the real time connectivity information based on popularity and creating a weighted list from the weighted real time connectivity information.

Tang discloses a method for allowing a client to monitor network traffic (Page 5, ¶ 0060, lines 3-5). Tang does disclose wherein the program instructions further comprises assigning a weight to the real time connectivity information based on popularity and creating a weighted list from the weighted real time connectivity information (Page 5, ¶ 0060, lines 3-5 & Page 7, ¶ 0081, lines 7-9 & Page 9, ¶ 0108, lines 9-11).

It would have been obvious to one of ordinary skill in this art at the time of invention by applicant to implement Tang's method of creating a weighted list with Hibbard's real time information. A person of ordinary skill in this art would have been motivated to make the modification because often there are more than one gateways capable of complete the same communication and ranking each address allows the system to pick the most reliable communication connection (Tang: Page 7, ¶ 0081, lines 7-13).

As to claim 5, Tang discloses the computer readable medium of claim 4 further comprising the instruction:

(c) storing the weighted list in the client system (Page 9, ¶ 0108, lines 9-11).

As to claim 6, Hibbard discloses the computer readable medium of claim 5, wherein the local persistent knowledgebase is stored in the client system (Page 2, ¶ 0023, lines 4-6).

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over unpatentable over Hibbard taken in view of Pedersen (6,157,944).

As to claim 7, Hibbard discloses a computer readable medium for establishing a network connection between a client system and a network, the program instructions for: (a) collecting real time connectivity information by the client system (Page 2, ¶ 0020, lines 1-4); and (b) utilizing the real time connectivity information by the client system to establish a connection with the network (Page 2, ¶ 0023, lines 6-9). Hibbard fails to disclose utilizing a set of local rules to establish a connection to the network.

Pedersen discloses a method for managing a communications connection for a client (column 1, lines 8-10). Pedersen does disclose utilizing a set of local rules to establish a connection to the network (column 1, lines 16-18).

It would have been obvious to one of ordinary skill in this art at the time of invention by applicant to implement Hibbard's method of establishing a network connection with Pedersen's set of local rules. A person of ordinary skill in this art would have been motivated to make the modification because Pedersen's local rules provide

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that the server and client are using the same communication standards (Pedersen: column 1, lines 18-21).

Claims 8,9,11 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over unpatentable over Hibbard taken in view of Miller (6,742,141).

As to claim 8, Hibbard discloses wherein the utilizing step (b) includes:

(b1) detecting a failed connection (Page 2, ¶ 0020, lines 1-4);

generates a solution based on the real time connectivity information (Page 2, ¶ 0022 & ¶ 0024); and

(b4) implementing the solution (Page 2, ¶ 0023, lines 1-4).

Hibbard fails to disclose

(b2) determining a cause of the failed connection by the client system; and

(b3) generating a solution based on the cause.

Miller discloses a application which provides services for monitoring, diagnosing and solving problems in a client machine (abstract, lines 10-16). Miller does disclose:

(b2) determining a cause of failure by the client system (column 9, lines 20-23);
and

(b3) generating a solution based on the cause (column 9, lines 20-23).

It would have been obvious to one of ordinary skill in this art at the time of invention by applicant to implement Hibbard's method of detecting failures and repairing failures with Miller's method of generating a solution base upon the cause of the failure. A person of ordinary skill in this art would have been motivated to make the modification because specific problems have unique solutions (Miller: column 4, lines 43-44).

As to claim 9, Hibbard discloses the computer readable medium of claim 8, wherein the determining instruction (b2) includes:

(b2i) analyzing at least one error message associated with the failed connection (Page 2, ¶ 0024, lines 4-6); and

(b2ii) auditing a plurality of communication devices in the client to determine which of the plurality of communication devices is a potential candidate for connectivity (Page 2, ¶ 0031).

As to claim 11, Miller discloses the computer readable medium of claim 8 wherein the utilizing instruction (b) includes:

(b5) repeating instruction (b3) for a next solution if the implementation of a previous solution is unsuccessful (column 22, lines 59-63).

As to claim 14, Hibbard discloses a computer system coupled to a network comprising: at least one network adapter for monitoring and collecting real time connectivity information from the network (Page 2, ¶ 0020, lines 1-4);

memory for storing the real time connectivity information (Page 2, ¶ 0024, lines 4-6); and a processor coupled to the memory and to the at least one network adapter, wherein the processor is configured to execute program instructions for utilizing the real time connectivity information to repair a failed network connection between the computer system and the network (Page 2, ¶ 0019). Hibbard fails to disclose wherein the processor is configured to invoke an inference engine for determining a cause of a failed connection between the computer system and the network and for generating a solution based on the cause utilizing the real time connectivity information.

Miller discloses a application which provides services for monitoring, diagnosing and solving problems in a client machine (abstract, lines 10-16). Miller does disclose wherein the processor is configured to invoke an inference engine for determining a cause of a failed connection between the computer system and the network and for generating a solution based on the cause utilizing the real time connectivity information.

It would have been obvious to one of ordinary skill in this art at the time of invention by applicant to implement Hibbard's method of detecting failures and repairing failures with Miller's method of generating a solution base upon the cause of the failure. A person of ordinary skill in this art would have been motivated to make the modification because specific problems have unique solutions (Miller: column 4, lines 43-44).

Claim 10 rejected under 35 U.S.C. 103(a) as being unpatentable over Hibbard and Miller as applied to claim 8 above, and further in view of Farrow.

The combination of Hibbard and Miller discloses generating a solution based on the cause and the real time connectivity information. The combination fails to disclose wherein the generating step (b3) includes:

(b3i) analyzing the real time connectivity information to determine a range of IP addresses assigned by a DHCP server;

(b3ii) generating a plurality of IP addresses within the range;

(b3iii) selecting one of the plurality of IP addresses and determining whether it is in use; and

(b3iv) assigning the one IP address to the client system if the one IP address is not in use.

Farrow discloses a method for managing IP addresses in a network (abstract, lines 1-2). Farrow does disclose wherein the generating step (b3) includes:

(b3i) analyzing the real time connectivity information to determine a range of IP addresses assigned by a DHCP server (column 1, lines 29-32);

(b3ii) generating a plurality of IP addresses within the range (column 1, lines 34-35);

(b3iii) selecting one of the plurality of IP addresses and determining whether it is in use (column 1, lines 34-36); and

(b3iv) assigning the one IP address to the client system if the one IP address is not in use (column 1, lines 33-37).

It would have been obvious to one of ordinary skill in this art at the time of invention by applicant to implement Hibbard and Miller's method for generating a solution with Farrow's method of assigning IP addresses to client systems. A person of ordinary skill in this art would have been motivated to make the modification because DHCP simplifies management by eliminate the need for the network administrator to manually configure the network (Farrow: column 1, lines 26-29).

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140

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F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-11 provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-11 of copending Application No. 10/733,592. Although the conflicting claims are not identical, they are not patentably distinct from each other because even though one is a method and the other is a computer readable medium it would have been obvious to one of ordinary skill in the art to implement a method in a computer system.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles Ehne whose telephone number is (571)-272-2471. The examiner can normally be reached on Monday-Friday 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on (571)-272-3645. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Bryce P. Bonzo
BRYCE P. BONZO
PRIMARY EXAMINER